

Contracts and Litigation: Some Comments

Marvin Hayenga

Iowa State University

Background

- Contracts are increasingly prevalent throughout the food sector
- Contracting parties are consenting adults, doing this voluntarily
- All contracts are incomplete, some more than others

Key problems

- not foreseeing potential problems, and dealing with them in advance
- not fulfilling contract obligations
- high cost litigation
- demands for broad policy changes, like outlawing contracts, to right perceived problems attributed to contracts, perhaps incorrectly

Examples

- Hedge to arrive contracts in late 1990s
 - Multi-year grain pricing contracts built upon a faulty economic design
 - Prices skyrocketed far beyond expectations
 - Operating capital shortages
 - Unexpected calls for grain
 - Unexpected major drops on price “guarantees”
- Who failed to live up to contracts first??

Examples

- Pig marketing contracts
 - Plant closing
 - Pay suppliers likely contract earnings
 - Failure to deliver
 - Any?
 - Minimum per year?
 - Sufficient quality?
 - Changing premiums/discounts
 - Pay lost income or replacement cost

Examples

- Production contracts
 - Equitable treatment among contract suppliers?
 - Providing inadequate quality or quantity inputs
 - Perpetual contracts versus contract length terms
 - Renewing contracts when there is little competition

Examples

- Litigation in beef and pork industries accusing major packers of using contracts to manipulate price
- Tyson pig producers dropped by Tyson

Contracting implications

- Reduce risks or provide payoffs for individual firms and improve coordination for parts of food chain
- Increased demands for labeling, quality assurances will foster growth in contracts in food sector
- Sometimes leads to perceived inequities, with demands for court or policy remedies
- Must do a better job of anticipating problems and setting up processes to deal with them in the original contracts, or sufficient penalties to discourage behavior that hurts you (your prenuptial agreement!)